

**RECEIVED****THE STATE OF SOUTH CAROLINA  
In The Supreme Court****MAR 22 2019****S.C. SUPREME COURT****APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA****Appellate Case No. 2019-000300****Commission Docket No. 2017-292-WS**

In Re: Application of Carolina Water Service, Inc.  
for Approval of an Increase in its Rates for  
Water and Sewer Services

**MOTION TO REMAND TO THE SOUTH CAROLINA  
PUBLIC SERVICE COMMISSION**

Appellant Carolina Water Service, Inc. ("CWS"), pursuant to Rule 240, SCACR, moves this Court to remand this action to the South Carolina Public Service Commission ("Commission") so that the Commission can consider and rule on a petition for reconsideration filed by CWS prior to the filing of the notice of appeal. In support of the motion, CWS would show the following.

1, The notice of appeal in this matter was filed on February 25, 2019. Exhibit A. In the cover letter filing the notice, counsel for CWS explained that it had filed a petition for reconsideration pursuant to S.C. Code Ann. §58-5-330 ("Petition" or "CWS Petition," Exhibit B) and that the notice of appeal was being filed in an abundance of caution because of the possibility that the CWS Petition would be considered an impermissible "successive" petition since the order for which CWS sought reconsideration was itself the result of a rehearing requested by another party, the Office of Regulatory Staff ("ORS").

2. On February 27, 2019, the ORS filed a response (“ORS Response,” Exhibit C) to the CWS Petition in which ORS argued (1) that the CWS notice of appeal divested the Commission of jurisdiction over the Petition and (2) that the Petition was not permitted because it was a successive petition that followed a rehearing.

3. On March 5, 2019, CWS filed a reply (“CWS Reply,” Exhibit D) in which it argued: (1) that its Petition was allowed under S.C. Code Ann. §58-5-330; (2) that this Court had, in similar circumstances, held an appeal from the Commission in abeyance pending a final ruling on a petition for reconsideration; and (3) that this Court’s precedent on Rule 59(e) issues strongly supported the Commission having the authority to rule on the Petition.

4. On March 7, 2019, the Commission issued Order No. 2019-178 in which it dismissed the CWS Petition on the ground that the notice of appeal divested the Commission of jurisdiction. Exhibit E.

5. As explained in the CWS Petition and Reply, the issues on which CWS sought reconsideration were issues that CWS had not had any opportunity to raise prior to the Petition. Order No. 2018-802 ruled on these issues in a way that was contrary to the previous rulings in the proceeding. Its Petition for Reconsideration was the first time that CWS had an opportunity to ask the Commission to review its decision on these issues. This Court’s ruling in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772, (2004) explained the importance of allowing the lower courts (and administrative bodies) a full opportunity to address all issues before those issues are reviewed on appeal.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

*Elam, supra*, 361 S.C. at 23. The ruling in *Elam* strongly supports the CWS motion to remand.

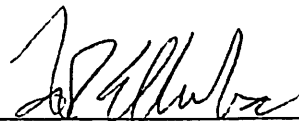
6. In addition, the provisions of S.C. Code Ann. §58-5-330 emphasize the importance of a full review by the Commission of issues prior to any appeal.

Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists. No right of appeal arising out of an order or decision of the commission accrues in any court to any corporation or person unless the corporation or person makes application to the commission for a rehearing within the time specified.

In the proceeding before the Commission, there has been no opportunity for the Commission to review and reconsider its rulings in Order No. 2018-802. Under these circumstances, it is appropriate and necessary that this matter be remanded to the Commission for its consideration of the CWS Petition.

WHEREFORE, CWS respectfully requests that this Court issue an order remanding this matter to the Commission for consideration of, and a ruling on, the CWS Petition for Reconsideration. The remand will ensure that this Court only reviews on appeal matters that were fully presented to the Commission.

Dated this 22<sup>nd</sup> day of March, 2019.



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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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PROOF OF SERVICE

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This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC, have served the Motion to Remand to the South Carolina Public Service Commission on the parties below by placing a copy of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

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of South Carolina  
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Dated this 22<sup>nd</sup> day of March, 2019.

